

1 TREVOR J. HATFIELD, ESQ  
2 Nevada Bar No. 7373  
3 HATFIELD & ASSOCIATES, LTD.  
4 703 S. Eighth Street  
5 Las Vegas, Nevada 89101  
6 Telephone: (702) 388-4469  
7 Facsimile: (702) 386-9825  
8 Email: [thatfield@hatfieldlawassociates.com](mailto:thatfield@hatfieldlawassociates.com)

9 *Attorneys for Plaintiff*

10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF NEVADA**

12 GINA GARCIA NAVARRETE,

13 Plaintiff,

14 vs.

15 POLY-WEST, INC., et al.,

16 Defendants.

CASE NO: 2:18-cv-01805-GMN-NJK

**PLAINTIFF'S MOTION TO EXTEND  
TIME FOR SERVICE OF PROCESS  
PURSUANT TO F.R.C.P. 4(M)**

17 COMES NOW, Plaintiff GINA GARCIA NAVARARETE, by and through her counsel,  
18 the law firm of Hatfield & Associates, Ltd., and files this Motion to Extend Time for Service of  
19 Process pursuant to F.R.C.P. 4(m). This motion is made and based upon the pleadings and  
20 papers on file herein, the attached Memorandum of Points and Authorities and the Declaration of  
21 counsel.

22 Dated this 12<sup>th</sup> day of February 2019.

**HATFIELD & ASSOCIATES, LTD.**

23 By: /s/ Trevor J. Hatfield

24 Trevor J. Hatfield, Esq. (SBN 7373)  
25 703 South Eighth Street  
26 Las Vegas, Nevada 89101  
27 (702) 388-4469 Tel.

*Attorneys for Plaintiff*

**MEMORANDUM OF POINTS AND AUTHORITIES**

I.

Plaintiff moves for an Order extending the time for service of the Complaint and Summons on Defendants, [ECF No. 1] based on F.R.C.P. 4(m). The docket entry upon Plaintiff filing her complaint noted that service was due on December 17, 2018. Plaintiff has good cause for the extension of the time period, and even absent good cause the Court has discretion to extend the time period. Out of an abundance of caution, Plaintiff requests an extension on both grounds. Plaintiff requests another sixty days' time to effect service.

Plaintiff has good cause for an extension of the time for service. Plaintiff is pro se. She mailed the summons and complaint but may not have complied with effecting service of process. Plaintiff's counsel was just retained and just noticed his appearance on February 11, 2019. Plaintiff anticipates serving Defendant within one week, but requests no later than sixty days' time from the deadline of service as set by the clerk of the court.

II.

Upon a plaintiff's failure to serve a complaint within 90 days, pursuant to FRCP 4(m), failure to serve does not automatically require dismissal, courts distinguish between justified delay or "good cause" and excusable neglect. *See, Lemoge v. U.S.* 587 F.3d 1188, 1198 (9<sup>th</sup> Cir. 2009).

Upon a showing of justified delay, the district court must grant a plaintiff an extension for "an appropriate period." *Id.* If good cause is not shown, the district court has the option of exercising its discretion by excusing the delay and issuing an order that directs that service be completed within a specified additional period of time. *Id.*

Pursuant to the *Lemoge* case, a plaintiff may be required to show excusable neglect, defendant's lack of prejudice, and plaintiff's severe prejudice if the complaint is dismissed. In

1 this case, Plaintiff will suffer severe prejudice if this case is dismissed, as this is an employment  
2 tort case and as the statute of limitations may have expired as to Plaintiff's 90-day deadline of 42  
3 U.S.C. § 2000e-16(c). Plaintiff also has made a showing that the balance of equities in this case  
4 falls in favor of Plaintiff as any failure to comply with the rules of civil procedure stem from  
5 Plaintiff being incarcerated, and only having retained counsel within the past few months' time,  
6 *pro bono*. Most telling, however, is the lack of prejudice to Defendants.

7  
8 Plaintiff and her counsel have not been dilatory in seeking to effectuate service;  
9 therefore, respectfully requests that the Court grant Plaintiff's motion.

10 Dated this 12<sup>th</sup> day of February 2019.

**HATFIELD & ASSOCIATES, LTD.**

11 By: /s/ Trevor J. Hatfield  
12 Trevor J. Hatfield, Esq. (SBN 7373)  
13 703 South Eighth Street  
14 Las Vegas, Nevada 89101  
15 (702) 388-4469 Tel.  
16 *Attorneys for Plaintiff*

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21 IT IS SO ORDERED.

22  
23  
24   
25 Nancy J. Koppe  
26 United States Magistrate Judge

27 February 13, 2019  
28 Date